

The Constitution Revision Commission
COMMITTEE MEETING EXPANDED AGENDA

GENERAL PROVISIONS
Commissioner Thurlow-Lippisch, Chair
Commissioner Gainey, Vice Chair

MEETING DATE: Tuesday, November 28, 2017

TIME: 1:30—6:00 p.m.

PLACE: 401 Senate Office Building, Tallahassee, Florida

MEMBERS: Commissioner Thurlow-Lippisch, Chair; Commissioner Gainey, Vice Chair; Commissioners Heuchan, Karlinsky, Lester, Nuñez, and Plymale

TAB	PROPOSAL NO. and INTRODUCER	PROPOSAL DESCRIPTION and COMMITTEE ACTIONS	COMMITTEE ACTION
1	P 12 Timmann	MISCELLANEOUS, repeal s. 19; Section 19 of Article X of the State Constitution to delete an obsolete provision regarding the development of a high speed ground transportation system. GP 11/28/2017 Favorable	Favorable Yeas 6 Nays 0
2	P 20 Rouson	MISCELLANEOUS, Repeal of criminal statutes; Section 9 of Article X of the State Constitution to provide that the repeal of a criminal statute shall not affect the prosecution of any crime committed before such repeal. GP 11/28/2017 Favorable JU	Favorable Yeas 6 Nays 0
3	P 65 Carlton	MISCELLANEOUS, Workplaces without tobacco smoke or vapor; Section 20 of Article X of the State Constitution to establish a general prohibition on the use of vapor-generating electronic devices in enclosed indoor workplaces. GP 11/28/2017 Favorable	Favorable Yeas 6 Nays 0
4	P 49 Gainey	MISCELLANEOUS, creates new section; a new section in Article X of the State Constitution to establish the rights to certain death benefits to the survivors of specified first responders and military members. GP 11/28/2017 Favorable FT	Favorable Yeas 6 Nays 0
5	P 57 Kruppenbacher	MISCELLANEOUS, creates new section; a new section in Article X of the State Constitution to establish rights to certain death benefits to the survivors of specified first responders, military members, and public school employees. GP 11/28/2017 Temporarily Postponed FT	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

General Provisions

Tuesday, November 28, 2017, 1:30—6:00 p.m.

TAB	PROPOSAL NO. and INTRODUCER	PROPOSAL DESCRIPTION and COMMITTEE ACTIONS	COMMITTEE ACTION
6	P 17 Gaetz	MISCELLANEOUS, Homestead; exemptions; Section 4 of Article X of the State Constitution to create exceptions to the homestead exemption from creditor claims. GP 11/28/2017 Temporarily Postponed FT	Temporarily Postponed
7	P 29 Newsome	MISCELLEANOUS; a new section in Article X of the State Constitution to establish requirements on employers to verify the employment eligibility of new employees using the Employment Authorization Program or any successor program administered by the Federal Government and to provide for enforcement by the Department of Business and Professional Regulation. GP 11/28/2017 Favorable EX	Favorable Yeas 6 Nays 0

By Commissioner Timmann

timmannc-00016-17

201712__

A proposal to amend

Section 19 of Article X of the State Constitution to delete an obsolete provision regarding the development of a high speed ground transportation system.

Be It Proposed by the Constitution Revision Commission of Florida:

Section 19 of Article X of the State Constitution is amended, and present sections 20 through 29 of that article are renumbered as sections 19 through 28, respectively, to read:

ARTICLE X

MISCELLANEOUS

~~SECTION 19. High speed ground transportation system. To reduce traffic congestion and provide alternatives to the traveling public, it is hereby declared to be in the public interest that a high speed ground transportation system consisting of a monorail, fixed guideway or magnetic levitation system, capable of speeds in excess of 120 miles per hour, be developed and operated in the State of Florida to provide high speed ground transportation by innovative, efficient and effective technologies consisting of dedicated rails or guideways separated from motor vehicular traffic that will link the five largest urban areas of the State as determined by the Legislature and provide for access to existing air and ground transportation facilities and services. The Legislature, the Cabinet and the Governor are hereby directed to proceed with the development of such a system by the State and/or by a private entity pursuant to state approval and authorization, including the acquisition of right of way, the financing of design and construction of the system, and the operation of the system, as provided by specific appropriation and by law, with construction~~

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

timmannc-00016-17

201712__

33 ~~to begin on or before November 1, 2003.~~

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**Constitution Revision Commission
General Provisions Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 12

Relating to: MISCELLANEOUS, repeal s. 19

Introducer(s): Commissioner Timmann

Article/Section affected:

Date: November 25, 2017

	REFERENCE	ACTION
1.	GP	Pre-meeting

I. SUMMARY:

This proposal deletes section 19 of Article X of the Florida Constitution, regarding the development of a high speed ground transportation system. The section was repealed in 2004 and is no longer in effect.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

In November of 2000, Florida voters approved a constitutional amendment¹ mandating the construction of a high speed ground transportation system for the state. The amendment required the use of train technologies that operate at speeds in excess of 120 miles per hour. The high speed rail system was to link the five largest urban areas in Florida, and construction was mandated to begin by November 1, 2003.² To implement the constitutional amendment, the Florida Legislature enacted the Florida High-Speed Rail Authority Act³ and created the Florida High Speed Rail Authority in 2002. In November 2004, however, the high speed rail constitutional amendment was repealed.⁴

¹ Art. X, s. 19, Fla. Const. was created through citizen initiative. See Florida Department of State website for more information regarding the High Speed Rail Amendment

<http://dos.elections.myflorida.com/initiatives/initdetail.asp?account=30427&seqnum=1> (last visited 11/25/17).

² Section 341.8202, F.S. (2002).

³ Sections 341.8201 through 341.842, F.S.

⁴ Art X., s. 19, Fla. Const. was repealed by citizen initiative. See Florida Department of State website for more information regarding the repeal of the High Speed Rail Amendment

<http://dos.elections.myflorida.com/initiatives/initdetail.asp?account=34876&seqnum=2> (last visited 11/25/17).

B. EFFECT OF PROPOSED CHANGES:

The proposal deletes an obsolete provision regarding the development and operation of a high speed ground transportation system for the State of Florida that was repealed in 2004.

C. FISCAL IMPACT:

None.

III. Additional Information:**A. Statement of Changes:**

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.

By Commissioner Rouson

rousond-00023-17

201720__

1 A proposal to amend
2 Section 9 of Article X of the State Constitution to
3 provide that the repeal of a criminal statute shall
4 not affect the prosecution of any crime committed
5 before such repeal.

6
7 Be It Proposed by the Constitution Revision Commission of
8 Florida:

9
10 Section 9 of Article X of the State Constitution is amended
11 to read:

12 ARTICLE X

13 MISCELLANEOUS

14 SECTION 9. Repeal of criminal statutes.--Repeal ~~or amendment~~
15 of a criminal statute shall not affect prosecution ~~or punishment~~
16 for any crime ~~previously~~ committed before such repeal.

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

11-28-17

Meeting Date

P 20

Proposal Number (if applicable)

*Topic Proposal 20 - Act. X, sec. 9

Amendment Barcode (if applicable)

*Name Greg Newburn

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Phone 352.682.2542

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Gainesville, FL

State

32614

Zip

Email gnewburn@famm.org

*Speaking: ☐ For ☐ Against ☒ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No
(If requested)

If yes, who? Families Against Mandatory Minimums

Are you a registered lobbyist? ☒ Yes ☐ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

**Constitution Revision Commission
General Provisions Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 20

Relating to: MISCELLANEOUS, Repeal of criminal statutes

Introducer(s): Commissioner Rouson

Article/Section affected:

Date: November 22, 2017

	REFERENCE	ACTION
1.	GP	Pre-meeting
2.	JU	

I. SUMMARY:

The Proposal amends section 9 of Article X to provide that the repeal of a criminal statute shall not affect the prosecution of any crime committed before such repeal.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Savings Clause was added to the Florida Constitution in 1885 in response to a high profile criminal case in which a defendant charged with assault could not be prosecuted because the legislature repealed the assault statute and failed to “save” prosecutions for offenses committed before the repeal.¹ The Savings Clause prevents the legislature from making changes to substantive criminal laws, including sentencing laws, retroactive.

Currently, the Florida Constitution provides that the “Repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed.” Termed the “Ex Post facto” clause, the purpose of the clause is to require the statute in effect at the time of the crime to govern the sentence an offender receives for the commission of that crime.² In cases where a statute was found to be unconstitutional, the courts have allowed the amended statute to serve as the governing law in individual

¹ Information provided by Families Against Mandatory Minimums (FAMM) (on file with CRC staff). See *Higginbotham v. State*, 19 Fla. 557 (1882).

² *Horton v. Crosby*, 848 So.2d 504 (Fla. 3rd DCA 2003).

cases.³ The federal government is barred from passing ex post facto laws⁴ and in general, individual states are barred from passing ex post facto laws as well.⁵ However, the US Supreme Court has held that in some limited circumstances, states may pass ex post facto laws if they have a narrow application, and the “statute’s intent was to create a civil and nonpunitive regime.”⁶ One example of this is the requirement that convicted child sex offenders must register with the state.⁷

Most states and the federal government have Savings Clause statutes that limit retroactivity of changes to criminal and civil statutes.⁸ Some states have statutory provisions allowing for retroactivity when it is made explicit in new law.⁹ Florida is one of only 3 states (aside from New Mexico and Oklahoma) that have a constitutional savings clause.¹⁰ But the constitutions of New Mexico and Oklahoma prohibit retroactivity of repeals of criminal statutes.¹¹ Florida is the only state in which the constitution explicitly forbids retroactivity of amendments to criminal statutes.¹²

B. EFFECT OF PROPOSED CHANGES:

While the ex post facto clauses of the federal and state constitutions prevent new punishments “to a crime already consummated, to the detriment or material disadvantage of the wrongdoer,”¹³ there is no constitutional limitation on retroactive application of criminal legislation which mollifies criminal sanctions.¹⁴

The removal of “or amendment” and “or punishment” from the clause would only prevent the repeal of a criminal statute from affecting the prosecution of a crime. However, the removal of the punishment provision could allow courts to consider altering punishment in light of a statute being repealed or amended. For example, in 2014, the legislature amended drug sentencing laws.¹⁵ A defendant who committed certain drug offenses on June 30, 2014 would serve five times longer in prison as a defendant who committed that same offense one day later. A repeal of the Savings Clause

³ *Horsley v. State*, 160 So.3d (Fla. 2015).

⁴ US Const. Art I, s. 9, Cl. 3.

⁵ US Const. Art I s. 10, Cl. 1

⁶ *Smith v. Doe*, 538 U.S. 84 (2003).

⁷ *Id.*

⁸ Information provided by proposal sponsor (on file with CRC staff).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Lindsey v. Washington*, 301 U.S. 397, 401 (1937). The classic definition of an *ex post facto* law appears in *Calder v. Bull*, 3 U.S. (3 Dall.) 386, **390** (1798) (emphasis in the original): 1st. Every law that makes an action done before the passing of the law, and which was *innocent* when done, criminal; and punishes such action. 2d. Every law that *aggravates a crime*, or makes it *greater* than it was, when committed. 3d. Every law that *changes the punishment*, and inflicts a *greater punishment*, than the law annexed to the crime, when committed. 4th. Every law that alters the *legal rules of evidence*, and receives less, or different testimony, than the law required at the time of the commission of the offence, *in order to convict the offender*.

¹⁴ *Today’s Law and Yesterday’s Crime: Retroactive Application of Ameliorative Criminal Legislation*, http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=5103&context=penn_law_review (last visited 11/22/17).

¹⁵ See ch. 2014-176, L.O.F.

will allow to the legislature to retroactively apply lesser sentencing to prisoners currently in prison.

C. FISCAL IMPACT:

If the proposal is adopted by the voters, the legislature may apply new sentencing guidelines to prisoners currently incarcerated allowing an earlier release and possibly reduce expenses to the state.

III. Additional Information:

A. Statement of Changes:

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.

By Commissioner Carlton

carlton1-00059A-17

201765__

A proposal to amend

Section 20 of Article X of the State Constitution to establish a general prohibition on the use of vapor-generating electronic devices in enclosed indoor workplaces.

Be It Proposed by the Constitution Revision Commission of Florida:

Section 20 of Article X of the State Constitution is amended to read:

ARTICLE X
MISCELLANEOUS

SECTION 20. Workplaces without tobacco smoke or vapor.—

(a) PROHIBITION. As a Florida health initiative to protect people from the health hazards of second-hand tobacco smoke and vapor, tobacco smoking and the use of vapor-generating electronic devices are ~~is~~ prohibited in enclosed indoor workplaces. This section does not preclude the adoption of ordinances that impose more restrictive regulation on the use of vapor-generating electronic devices than is provided in this section.

(b) EXCEPTIONS. As further explained in the definitions below, tobacco smoking and the use of vapor-generating electronic devices may be permitted in private residences whenever they are not being used commercially to provide child care, adult care, or health care, or any combination thereof; and further may be permitted in retail tobacco shops, vapor-generating electronic device retailers, designated smoking guest rooms at hotels and other public lodging establishments; and stand-alone bars. However, nothing in this section or in its implementing legislation or regulations shall prohibit the

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owner, lessee, or other person in control of the use of an enclosed indoor workplace from further prohibiting or limiting smoking or the use of vapor-generating electronic devices therein.

(c) DEFINITIONS. For purposes of this section, the following words and terms shall have the stated meanings:

(1) "Smoking" means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product.

(2) "Second-hand smoke," also known as environmental tobacco smoke (ETS), means smoke emitted from lighted, smoldering, or burning tobacco when the smoker is not inhaling; smoke emitted at the mouthpiece during puff drawing; and smoke exhaled by the smoker.

(3) "Work" means any person's providing any employment or employment-type service for or at the request of another individual or individuals or any public or private entity, whether for compensation or not, whether full or part-time, whether legally or not. "Work" includes, without limitation, any such service performed by an employee, independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant, volunteer, and the like.

(4) "Enclosed indoor workplace" means any place where one or more persons engages in work, and which place is predominantly or totally bounded on all sides and above by physical barriers, regardless of whether such barriers consist of or include uncovered openings, screened or otherwise partially covered openings; or open or closed windows,

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62 jealousies, doors, or the like. This section applies to all such
63 enclosed indoor workplaces without regard to whether work is
64 occurring at any given time.

65 (5) "Commercial" use of a private residence means any time
66 during which the owner, lessee, or other person occupying or
67 controlling the use of the private residence is furnishing in
68 the private residence, or causing or allowing to be furnished in
69 the private residence, child care, adult care, or health care,
70 or any combination thereof, and receiving or expecting to
71 receive compensation therefor.

72 (6) "Retail tobacco shop" means any enclosed indoor
73 workplace dedicated to or predominantly for the retail sale of
74 tobacco, tobacco products, and accessories for such products, in
75 which the sale of other products or services is merely
76 incidental.

77 (7) "Designated smoking guest rooms at public lodging
78 establishments" means the sleeping rooms and directly associated
79 private areas, such as bathrooms, living rooms, and kitchen
80 areas, if any, rented to guests for their exclusive transient
81 occupancy in public lodging establishments including hotels,
82 motels, resort condominiums, transient apartments, transient
83 lodging establishments, rooming houses, boarding houses, resort
84 dwellings, bed and breakfast inns, and the like; and designated
85 by the person or persons having management authority over such
86 public lodging establishment as rooms in which smoking may be
87 permitted.

88 (8) "Stand-alone bar" means any place of business devoted
89 during any time of operation predominantly or totally to serving
90 alcoholic beverages, intoxicating beverages, or intoxicating

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91 liquors, or any combination thereof, for consumption on the
92 licensed premises; in which the serving of food, if any, is
93 merely incidental to the consumption of any such beverage; and
94 that is not located within, and does not share any common
95 entryway or common indoor area with, any other enclosed indoor
96 workplace including any business for which the sale of food or
97 any other product or service is more than an incidental source
98 of gross revenue.

99 (9) "Vapor-generating electronic device" means any product
100 that employs an electronic, a chemical, or a mechanical means
101 capable of producing vapor or aerosol from a nicotine product or
102 any other substance, including, but not limited to, an
103 electronic cigarette, electronic cigar, electronic cigarillo,
104 electronic pipe, or other similar device or product, any
105 replacement cartridge for such device, and any other container
106 of a solution or other substance intended to be used with or
107 within an electronic cigarette, electronic cigar, electronic
108 cigarillo, electronic pipe, or other similar device or product.

109 (10) "Vapor-generating electronic device retailer" means
110 any enclosed indoor workplace dedicated to or predominantly for
111 the retail sale of vapor-generating electronic devices and
112 components, parts, and accessories for such products, in which
113 the sale of other products or services is merely incidental.

114 (d) LEGISLATION. In the next regular legislative session
115 occurring after voter approval of this section or any amendment
116 to this section ~~amendment~~, the ~~Florida~~ legislature shall adopt
117 legislation to implement this section and any amendment to this
118 section ~~amendment~~ in a manner consistent with its broad purpose
119 and stated terms, and having an effective date no later than

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120 July 1 of the year following voter approval. Such legislation
121 shall include, without limitation, civil penalties for
122 violations of this section; provisions for administrative
123 enforcement; and the requirement and authorization of agency
124 rules for implementation and enforcement. This section does not
125 ~~Nothing herein shall~~ preclude the legislature from enacting any
126 law constituting or allowing a more restrictive regulation of
127 tobacco smoking or the use of vapor-generating electronic
128 devices than is provided in this section.

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/28/17
Meeting Date

X

65

Proposal Number (if applicable)

*Topic Vaping

Amendment Barcode (if applicable)

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*Speaking: ☒ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Florida League of Cities

Are you a registered lobbyist? ☒ Yes ☐ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

11/28/17

Meeting Date

65

Proposal Number (if applicable)

*Topic _____

Amendment Barcode (if applicable)

*Name Mark Landreth

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City State Zip

*Speaking: ☒ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? American Heart Association

Are you a registered lobbyist? ☒ Yes ☐ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

11/28/2017

Meeting Date

615

Proposal Number (if applicable)

*Topic

Amendment Barcode (if applicable)

*Name

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*Speaking:



For



Against



Information Only

Waive Speaking:



In Support



Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?



Yes



No

If yes, who?

American Cancer Society Cancer Action Network

Are you a registered lobbyist?



Yes



No

Are you an elected official or judge?



Yes



No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

**Constitution Revision Commission
General Provisions Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 65

Relating to: MISCELLANEOUS, Workplaces without tobacco smoke or vapor

Introducer(s): Commissioner Carlton and others

Article/Section affected:

Date: November 22, 2017

	REFERENCE	ACTION
1.	GP	Pre-meeting

I. SUMMARY:

The proposal amends Section 20 of Article X of the Florida Constitution to establish a general prohibition on the use of vapor generating electronic devices in enclosed indoor workplaces.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Indoor Smoking Ban

Section 20 of Article X currently only prohibits the smoking of tobacco in enclosed indoor work places.¹ This prohibition was added by general election in 2002,² before tobacco vaporizers were popular or even on the market in the U.S.³

There are four exceptions to the prohibition, including:

- Private residences whenever the residence is not being used commercially to provide child care, adult care, health care, or combination thereof;
- Retail tobacco shops;
- Designated smoking guest rooms at hotels and other public lodging establishments; and
- Stand-alone bars.

Currently, s. 386.204, F.S., prohibits a person from smoking in an enclosed indoor workplace, except as otherwise provided in s. 386.2045, F.S. Section 386.2045, F.S., delineates specific exceptions to

¹ Fla. Const. Art. X, § 20.

² *Id.*

³ Pepper, Jessica K. & Noel T. Brewer, *Electronic Nicotine Delivery System (Electronic Cigarette) Awareness, Use, Reactions and Beliefs: a Systematic Review*, 23 TOBACCO CONTROL, 375 (2013).

enclosed workplaces for certain locations where tobacco smoking may be permitted, including: private residences, retail tobacco shops, designated smoking guest rooms, stand-alone bars, rooms designated for smoking cessation and medical or scientific research, and customs smoking rooms in airport in-transit lounges.

Vaping Products

A systematic review of the health risks from passive exposure to such vapor concluded that “the absolute impact from [second-hand] exposure to [tobacco vapor] has the potential to lead to adverse health effects.”⁴

E-cigarettes have simply not been around long enough to determine their long-term health effects. However, studies have shown that probable cancer-causing chemicals, such as formaldehyde and acetaldehyde, are measurable in some e-cigarette vapor.⁵ The flavoring can contain diacetyl, a chemical linked to serious lung disease.⁶ The vapor has also been found to contain volatile organic compounds such as benzene, and heavy metals, such as nickel, tin, and lead.⁷ Scientists are still working to understand more fully the health effects and harmful doses of e-cigarette contents when they are heated and turned into an aerosol, both for active users who inhale from a device and for those who are exposed to the aerosol secondhand.⁸ There are more than 460 brands on the market,⁹ which vary widely in chemicals used and in the amount of nicotine they deliver.¹⁰

B. EFFECT OF PROPOSED CHANGES:

The proposal prohibits vapor generating electronic devices in enclosed indoor workplaces, just as smoking tobacco is prohibited. The proposal also establishes vapor-generating device retailers as an excepted location where use of vapor-generating electronic devices may be permitted.

The proposal defines “vapor-generating electronic device” to mean any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of a solution or other substance intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product; and defines “vapor-generating electronic device retailer” to mean any enclosed indoor workplace dedicated to or predominantly for the retail sale of vapor-generating electronic devices and

⁴ Hess, Isabel MR., Lachireddy, K., & Capon, A. *A Systematic Review of the Health Risks From Passive Exposure to Electronic Cigarette Vapor*. 26 PUBLIC HEALTH RES. PRACT. 2 (2016).

⁵ U.S. National Library of Medicine National Institutes of Health. *Safety evaluation and risk assessment of electronic cigarettes as tobacco cigarette substitutes: a systematic review*. Ther Adv Drug Saf. 2014.

⁶ <https://e-cigarettes.surgeongeneral.gov/knowtherisks.html> (last visited 11/22/17).

⁷ *Id.*

⁸ *Id.*

⁹ British Medical Journal. *Four hundred and sixty brands of e-cigarettes and counting: implications for product regulation*. (12 May 2014). http://tobaccocontrol.bmj.com/content/23/suppl_3/iii3.full (last visited 11/22/17).

¹⁰ World Health Organization (WHO). *Questions and answers on electronic cigarettes or electronic nicotine delivery systems (ENDS)*. (10 Jul 2013). http://www.who.int/tobacco/communications/statements/electronic_cigarettes/en/index.html (last visited 11/22/17).

components, parts, and accessories for such products, in which the sale of other products or services is merely incidental.

The proposal does not preclude or prohibit:

- the adoption of ordinances that impose more restrictive regulation of the use of vapor-generating electronic devices than is provided in the proposal;
- an owner, lessee, or other person in charge of the use of an indoor workplace from further prohibiting or limiting the use of vapor-generating electronic devices; or
- the legislature from enacting any law constituting or allowing a more restrictive regulation of the use of vapor-generating electronic devices.

The proposal instructs the legislature to adopt legislation to implement the proposal in the next legislative session after voter approval with the implementing language to take effect no later than July 1 of the year following voter approval.

C. FISCAL IMPACT:

Minimal impact. There is already an enforcement mechanism under the existing law. The Department of Business and Professional Regulation does not anticipate a fiscal impact to state or local government.

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.

By Commissioner Gainey

gaineye-00077-17

201749__

A proposal to create

a new section in Article X of the State Constitution to establish the rights to certain death benefits to the survivors of specified first responders and military members.

Be It Proposed by the Constitution Revision Commission of Florida:

A new section is added to Article X of the State Constitution to read:

ARTICLE X
MISCELLANEOUS

Death benefits for survivors of first responders and military members.—

(a) A death benefit shall be paid by the employing agency when a firefighter; a paramedic; an emergency medical technician; a law enforcement, correctional, or correctional probation officer; or a member of the Florida National Guard, while engaged in the performance of their official duties, is:

(1) Accidentally killed or receives accidental bodily injury which results in the loss of the individual's life, provided that such killing is not the result of suicide and that such bodily injury is not intentionally self-inflicted; or

(2) Unlawfully and intentionally killed or dies as a result of such unlawful and intentional act or is killed during active duty.

(b) A death benefit shall be paid by funds from general revenue when an active duty member of the United States Armed Forces is:

(1) Accidentally killed or receives accidental bodily injury which results in the loss of the individual's life,

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201749__

provided that such killing is not the result of suicide and that such bodily injury is not intentionally self-inflicted; or

(2) Unlawfully and intentionally killed or dies as a result of such unlawful and intentional act or is killed during active duty.

(c) An eligible first responder must have been working for the State of Florida or any of its political subdivisions or agencies at the time of death. An eligible military member must have been a resident of this state or whose duty post was within the State of Florida at the time of death.

(d) Payments authorized under subsections (a) and (b), regardless of whether secured by insurance, shall be made to the beneficiary that is designated by such first responder or military member through a written designation signed by the first responder or military member and delivered to the employing agency during the first responder or military member's lifetime. If no such designation is made, the payment shall be made to the first responder's or military member's surviving child or children and spouse in equal portions, and if there is no surviving child or spouse, then to the first responder's or military member's parent or parents. If a beneficiary is not designated and there is no surviving child, spouse, or parent, the payment shall be made to the first responder or military member's estate.

(e) Payments that are made pursuant to subsections (a) through (d) are in addition to any workers' compensation or pension benefits and are exempt from the claims and demands of creditors of the first responder or military member.

(f) If a firefighter; a paramedic; an emergency medical

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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62 technician; a law enforcement, correctional, or correctional
63 probation officer; or an active duty member of the United States
64 Armed Forces or Florida National Guard is accidentally killed as
65 specified in paragraphs (a)(1) and (b)(1), or unlawfully and
66 intentionally killed as specified in paragraphs (a)(2) and
67 (b)(2), the state shall waive certain educational expenses that
68 the child or spouse of the deceased first responder or military
69 member incurs while obtaining a career certificate, an
70 undergraduate education, or a postgraduate education. The amount
71 waived by the state shall be an amount equal to the cost of
72 tuition and matriculation and registration fees for a total of
73 120 credit hours. The child or spouse may attend a state career
74 center, a Florida College System institution, or a state
75 university. The child or spouse may attend any or all of the
76 institutions specified in this subsection, on either a full-time
77 or part-time basis. The benefits provided to a child under this
78 subsection continue until the child's 25th birthday. The
79 benefits provided to a spouse under this subsection must
80 commence within 5 years after the death occurs, and entitlement
81 thereto shall continue until the tenth anniversary of that
82 death.

83 (g) This section does not limit the legislature from
84 enacting laws consistent with this section.

85 (h) This amendment becomes effective upon approval by the
86 electors.

11/28/17

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD
(Deliver completed form to Commission staff)

49

Meeting Date

Proposal Number (if applicable)

*Topic

Proposal 49

Amendment Barcode (if applicable)

*Name

DAVID L. Perry

Address

830 W. Jefferson St

Phone

888 644 1240

Street

Tallahassee

State

32304

Zip

Email

dlperry@tseu.edu

*Speaking:

☒

For

☐

Against

☐

Information Only

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

☒

Yes

☐

No

If yes, who?

The Florida Police Chiefs Association

Are you a registered lobbyist?

☐

Yes

☒

No

Are you an elected official or judge?

☐

Yes

☒

No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

11/28/17

Meeting Date

49

Proposal Number (if applicable)

*Topic Proposal 49, Death Benefits for Survivors

Amendment Barcode (if applicable)

*Name Michael DeLeo

Address 234 E 7th Ave

Phone 850-891-4341

Street

Tallahassee

FL

32303

City

State

Zip

Email Michael.DeLeo@tal.gov.com

*Speaking: ☒ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Florida Police Chiefs Association

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

11/28/2017 2017

Meeting Date

49

Proposal Number (if applicable)

*Topic Death Benefits Survivors of First Responders & Military Members

Amendment Barcode (if applicable)

*Name Sheriff Walt McNeil

Address 2825 Municipal Way

Phone 850-606-3300

Street

Tallahassee

FL

32304

City

State

Zip

Email

*Speaking: ☒ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who?

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☒ Yes ☐ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

11/28/2018 2017

Meeting Date

49

Proposal Number (if applicable)

*Topic Death Benefits Survivors of First Responders & Military Members

Amendment Barcode (if applicable)

*Name Sheriff Mike Adkinson

Address 752 Triple G Road

Phone 850-892-8186

Street

DeFuniak Springs

FL

32453

City

State

Zip

Email

*Speaking: ☒ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Florida Sheriffs Association

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☒ Yes ☐ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

**Constitution Revision Commission
General Provisions Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 49

Relating to: MISCELLANEOUS, creates new section

Introducer(s): Commissioners Gainey and Timmann

Article/Section affected:

Date: November 27, 2017

	REFERENCE	ACTION
1.	GP	Pre-meeting
2.	FT	

I. SUMMARY:

Proposal creates a new Section within Article X of the Florida Constitution to create additional survivor benefits for:

An individual working for the State of Florida or a political subdivision who is killed in the line of duty and employed as a first responder in one of the following positions:

- Firefighter
- Law Enforcement Officer
- Correctional Officer
- Correctional Probation Officer
- Florida National Guard Member

Or, an Active Duty Member of the United States Armed Services who is a resident of Florida or stationed in Florida at the time of death

The beneficiary must be designated in writing by the covered individual. If no beneficiary is designated the survivor benefit is paid in the following order of succession to the individual's:

- Surviving spouse and/or children in equal portion; or
- Surviving parent or parents if no surviving spouse or children, or
- Estate

These survivor benefit payments are in addition to any workers' compensation or pension benefit payments owed to the individual and are exempt from attachment or garnishment.

The surviving spouse or child can benefit from a state waiver of educational expenses for full-time or part-time attendance at a state career center, a Florida College System institution or a state university. The waiver is for up to 120 credit hours equal to the cost of tuition, matriculation, and registration fees while obtaining a career certificate, an undergraduate degree or a post-graduate degree. The education waiver is available for the surviving child until his or her 25th birthday or to the surviving spouse for up to five years and is available until the tenth anniversary after the individual's death.

The in-line-of-duty survivor benefits created by this proposal are not payable for a death resulting from an unlawful action by the individual or an intentionally self-inflicted bodily

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Currently there is no provision within the Florida Constitution that guarantees death benefits to first responders. There are existing laws that guarantee a death benefit for law enforcement, correctional, and correctional probation officers¹ as well as Firefighters.² The statutes are written so that the employing agency of the first responder is responsible to pay the death benefit to their employer. The amounts of the benefit are contingent on the circumstances of the death and range from \$150,000 if an officer is killed due to an unlawful act by another individual, to \$50,000 if the death was the result of an accident. Members of the Florida National Guard who are killed while on active state duty are entitled to benefits in line with those provided to Law enforcement officers killed in the line of duty.³ While there are benefits for law enforcement officers and firefighters, there are no statutory guarantees of benefits for emergency medical technicians, paramedics, or active duty military members. However, active duty military members qualify for a federal benefit program, and are automatically insured under Servicemembers' Group Life Insurance (SGLI) for the maximum amount of \$400,000 unless an election is filed reducing the insurance by \$50,000 increments or canceling it entirely.⁴

In 2016, the legislature passed SB 7012, which created death benefits under the Florida retirement system for surviving spouses and children of Special Risk Class members.⁵ This created the benefit of a monthly pension equal to one half of the decedent's monthly salary for the rest of the surviving spouse's lifetime, or if the decedent was vested, a lump sum. If the decedent leaves no survive spouses but is survived by a child under 18, the benefits extend to the child up until the 25th birthday as long as the child is unmarried and enrolled as a full-time student.

¹ F.S. §112.19

² F.S. §112.191

³ F.S. §250.34

⁴ <https://www.benefits.va.gov/insurance/sgli.asp> (last visited 11/25/17).

⁵ F.S. §121.091

Education benefits are also available for the spouse and children of a deceased law enforcement, correctional, or correctional probation officers pursuant to Florida law.⁶

B. EFFECT OF PROPOSED CHANGES:

The proposal creates a new Section within Article X of the Florida Constitution to create additional survivor benefits for:

An individual working for the State of Florida or a political subdivision who is killed in the line of duty and employed as a first responder in one of the following positions:

- Firefighter
- Law Enforcement Officer
- Correctional Officer
- Correctional Probation Officer
- Florida National Guard Member

Or, an Active Duty Member of the United States Armed Services who is a resident of Florida or stationed in Florida at the time of death

The beneficiary must be designated in writing by the covered individual. If no beneficiary is designated the survivor benefit is paid in the following order of succession to the individual's:

- Surviving spouse and/or children in equal portion; or
- Surviving parent or parents if no surviving spouse or children, or
- Estate

These survivor benefit payments are in addition to any workers' compensation or pension benefit payments owed to the individual and are exempt from attachment or garnishment.

The surviving spouse or child can benefit from a state waiver of educational expenses for full-time or part-time attendance at a state career center, a Florida College System institution or a state university. The waiver is for up to 120 credit hours equal to the cost of tuition, matriculation, and registration fees while obtaining a career certificate, an undergraduate degree or a post-graduate degree. The education waiver is available for the surviving child until his or her 25th birthday or to the surviving spouse for up to five years and is available until the tenth anniversary after the individual's death.

C. FISCAL IMPACT:

The following was provided by the Department of Management Services (DMS)⁷: The proposal is silent on the benefit amount provided under this program. Additionally, while the proposal specifies that benefits for active duty military members will be funded from

⁶ See F.S. §112.19(3)

⁷ DMS Analysis on CRC Proposal 49 (on file with CRC staff).

General Revenue, it is silent on the source of funding for benefits for government employees.

To administer this benefit, Florida governmental employers could be responsible for administering the benefit which is payable to the named surviving beneficiary for the impacted employees working for that government employer. The payment to beneficiaries of the active Armed Services members may pose administrative challenges. Challenges may also arise from personnel being reassigned between bases in and out of Florida, maintaining current beneficiary information for individuals outside of the workforce of Florida governmental employers and coordinating any ongoing benefits for the survivors of active Armed Services members. There are 55,862 active military members and 36,387 reservists stationed in Florida.⁸

Administering this Florida survivor benefit for military members cannot be assigned to the federal employer. There would have to be a Florida-based administrator for the program such as a Florida government agency or a contracted third party administrator.

The first responder positions covered may require more detail to ensure the benefit program is structured as envisioned by the proposal. For example:

- Are correctional officers and correctional probation officers limited to those employed by the Department of Corrections or are these terms inclusive of the correctional officers working in county jails and detention centers and the probation officers employed by local governments?
- Are correctional officers, correctional probation officers and law enforcement officers based on a definition in current law or on some other basis?
- Will volunteer firefighters become covered in addition to firefighters employed by state and local governments?

Currently, certain governmental positions, including firefighters, law enforcement officers and correctional officers who die of specified conditions enumerated in section 112.18, Florida Statutes, (tuberculosis, heart disease and hypertension) are presumed to have died in the line of duty for workers' compensation and retirement benefits. It is unclear whether this presumption will apply under this benefit program as well. If this presumption does apply, current federal requirements under the HEART Act which specify that an employee be considered "returned to work" for survivor benefit eligibility do not create an in line of duty presumption for members of the armed services.

The structure of the benefit program and how benefits are paid could trigger financial reporting requirements under the Governmental Accounting Standards Board requiring the employers participating in the program (whether an individual employer or in some multiple employer or agent retirement plan) to record long-term financial liabilities on their financial statements for the benefits paid under this provision.

⁸ According to the September 2017 report by the Defense Management Data Center for the Department of Defense.

The educational benefits for the surviving spouse or children for other employees killed in the line of duty are currently coordinated through the employer to verify eligibility of the requirement when the survivors are seeking access to education within the Florida career centers, the State Community College System or the State University System. A similar approach could continue for the survivors of first responders employed by that agency but the survivors of active duty Armed Services personnel stationed in Florida will require a different approach since there is no Florida governmental employer to verify eligibility for access or define the time limitations for the educational component of this benefit.

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.

By Commissioner Kruppenbacher

kruppenbf-00069A-17

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A proposal to create
a new section in Article X of the State Constitution
to establish rights to certain death benefits to the
survivors of specified first responders, military
members, and public school employees.

Be It Proposed by the Constitution Revision Commission of
Florida:

A new section is added to Article X of the State
Constitution to read:

ARTICLE X
MISCELLANEOUS

Death benefits for survivors of first responders, military
members, and public school employees.-

(a) A death benefit shall be paid by funds from general
revenue when a firefighter; a paramedic; an emergency medical
technician; a law enforcement, correctional, or correctional
probation officer; an active duty member of the United States
Armed Forces or the Florida National Guard; or a public school
employee, while engaged in the performance of their official
duties, is:

(1) Accidentally killed or receives accidental bodily
injury which results in the loss of the individual's life,
provided that such killing is not the result of suicide and that
such bodily injury is not intentionally self-inflicted; or

(2) Unlawfully and intentionally killed or dies as a result
of such unlawful and intentional act.

(b) In order to be eligible for payments authorized under
subsection (a):

(1) The first responder or public school employee must have
been working for the State of Florida or any of its political

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subdivisions at the time of death.

(2) The military member must have been a resident of this
state or whose duty post was within the State of Florida at the
time of death.

(c) Payments authorized under subsection (a), regardless of
whether secured by insurance, shall be made to the beneficiary
that is designated by such first responder, military member, or
public school employee through a written designation signed by
the first responder, military member, or public school employee
and delivered to the employing agency during the first
responder's, military member's, or employee's lifetime. If no
such designation is made, the payment shall be made to the first
responder's, military member's, or employee's surviving child or
children and spouse in equal portions, and if there is no
surviving child or spouse, then to the first responder's,
military member's, or employee's parent or parents. If a
beneficiary is not designated and there is no surviving child,
spouse, or parent, the payment shall be made to the first
responder's, military member's, or employee's estate.

(d) Payments that are made pursuant to subsections (a)
through (c) are in addition to any workers' compensation or
pension benefits and are exempt from the claims and demands of
creditors of the first responder, military member, or public
school employee.

(e) If a firefighter; a paramedic; an emergency medical
technician; a law enforcement, correctional, or correctional
probation officer; an active duty member of the United States
Armed Forces or the Florida National Guard; or a public school
employee is accidentally killed as specified in paragraph

kruppenbf-00069A-17

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62 (a) (1), or unlawfully and intentionally killed as specified in
63 paragraph (a) (2), the state shall waive certain educational
64 expenses that the child or spouse of the deceased first
65 responder, military member, or public school employee incurs
66 while obtaining a career certificate, an undergraduate
67 education, or a postgraduate education. The amount waived by the
68 state shall be an amount equal to the cost of tuition and
69 matriculation and registration fees for a total of 120 credit
70 hours. The child or spouse may attend a state career center, a
71 Florida College System institution, or a state university. The
72 child or spouse may attend any or all of the institutions
73 specified in this subsection, on either a full-time or part-time
74 basis. The benefits provided to a child under this subsection
75 continue until the child's 25th birthday. The benefits provided
76 to a spouse under this subsection must commence within 5 years
77 after the death occurs, and entitlement thereto shall continue
78 until the tenth anniversary of that death.

79 (f) This section does not limit the legislature from
80 enacting laws consistent with this section.

81 (g) This amendment becomes effective upon approval by the
82 electors.

**Constitution Revision Commission
General Provisions Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 57

Relating to: MISCELLANEOUS, creates new section

Introducer(s): Commissioner Kruppenbacher

Article/Section affected:

Date: November 27, 2017

	REFERENCE	ACTION
1.	GP	Pre-meeting
2.	FT	

I. SUMMARY:

The proposal creates a new Section within Article X of the Florida Constitution to create additional survivor benefits for:

An individual working for the State of Florida or a political subdivision who is killed in the line of duty and employed as a first responder in one of the following positions:

- Firefighter
- Law Enforcement Officer
- Correctional Officer
- Correctional Probation Officer
- Florida National Guard Member

An Active Duty Member of the United States Armed Services who is a resident of Florida or stationed in Florida at the time of death;

Or, a public school employee.

The beneficiary must be designated in writing by the covered individual. If no beneficiary is designated the survivor benefit is paid in the following order of succession to the individual's:

- Surviving spouse and/or children in equal portion; or
- Surviving parent or parents if no surviving spouse or children, or
- Estate

These survivor benefit payments are in addition to any workers' compensation or pension benefit payments owed to the individual and are exempt from attachment or garnishment.

The surviving spouse or child can benefit from a state waiver of educational expenses for full-time or part-time attendance at a state career center, a Florida College System institution or a state university. The waiver is for up to 120 credit hours equal to the cost of tuition, matriculation, and registration fees while obtaining a career certificate, an undergraduate degree or a post-graduate degree. The education waiver is available for the surviving child until his or her 25th birthday or to the surviving spouse for up to five years and is available until the tenth anniversary after the individual's death.

The in-line-of-duty survivor benefits created by this proposal are not payable for a death resulting from an unlawful action by the individual or an intentionally self-inflicted bodily injury.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Currently, there is no provision within the Florida Constitution that guarantees death benefits to first responders. There are existing laws that guarantee a death benefit for law enforcement, correctional, and correctional probation officers¹ as well as Firefighters.² The statutes are written so that the employing agency of the first responder is responsible to pay the death benefit to their employer. The amounts of the benefit are contingent on the circumstances of the death and range from \$150,000 if an officer is killed due to an unlawful act by another individual, to \$50,000 if the death was the result of an accident. Members of the Florida National Guard who are killed while on active state duty are entitled to benefits in line with those provided to Law enforcement officers killed in the line of duty.³ While there are benefits for law enforcement officers and firefighters, there are no statutory guarantees of benefits for emergency medical technicians, paramedics, or active duty military members. However, active duty military members qualify for a federal benefit program, and are automatically insured under Servicemembers' Group Life Insurance (SGLI) for the maximum amount of \$400,000 unless an election is filed reducing the insurance by \$50,000 increments or canceling it entirely.⁴

In 2016, the legislature passed SB 7012, which created death benefits under the Florida retirement system for surviving spouses and children of Special Risk Class members.⁵ This created the benefit of a monthly pension equal to one half of the decedent's monthly salary for the rest of the surviving spouse's lifetime, or if the decedent was vested, a lump sum. If the decedent leaves no survive spouses but is survived by a child under 18, the

¹ F.S. §112.19

² F.S. §112.191

³ F.S. §250.34

⁴ <https://www.benefits.va.gov/insurance/sgli.asp> (last visited 11/25/17).

⁵ F.S. §121.091

benefits extend to the child up until the 25th birthday as long as the child is unmarried and enrolled as a full-time student.

Education benefits are also available for the spouse and children of a deceased law enforcement, correctional, or correctional probation officers pursuant to Florida law.⁶

There is also a statutory provision for death benefits for teachers and school administrators killed or injured as a result of an unlawful and intentional act while he or she is engaged in the performance of teaching duties or school administrator duties.⁷ This bill was passed after a 13 year old shot his 35 year old English teacher to death on the last day of school in Palm Beach County.⁸ These benefits include a \$1,000 payout to the beneficiaries for burial expenses,⁹ and \$75,000 in addition to any other insurance, workers' compensation, or pension benefits or other benefits that teacher or school administrator beneficiaries and dependents are entitled to under state or federal statutes and shall be exempt from the claims and demands of creditors of such teacher or school administrator.¹⁰ The district school board that employed the teacher or school administrator is responsible for these payments, as well as the beneficiaries' health insurance premiums. The Department of Education reimburses the district for the premium payments.¹¹

B. EFFECT OF PROPOSED CHANGES:

The proposal creates a new Section within Article X of the Florida Constitution to create additional survivor benefits for:

An individual working for the State of Florida or a political subdivision who is killed in the line of duty and employed as a first responder in one of the following positions:

- Firefighter
- Law Enforcement Officer
- Correctional Officer
- Correctional Probation Officer
- Florida National Guard Member

An Active Duty Member of the United States Armed Services who is a resident of Florida or stationed in Florida at the time of death;

Or, a public school employee.

⁶ See F.S. §112.19(3)

⁷ F.S. §112.1915

⁸ http://articles.orlandosentinel.com/2000-06-09/news/0006090028_1_teacher-death-benefits-bush (last visited 11/25/17).

⁹ F.S. §112.1915 (3)(b)

¹⁰ F.S. §112.1915 (3)(a)

¹¹ F.S. §112.1915 (3)(c)(2)

The beneficiary must be designated in writing by the covered individual. If no beneficiary is designated the survivor benefit is paid in the following order of succession to the individual's:

- Surviving spouse and/or children in equal portion; or
- Surviving parent or parents if no surviving spouse or children, or
- Estate

These survivor benefit payments are in addition to any workers' compensation or pension benefit payments owed to the individual and are exempt from attachment or garnishment.

The surviving spouse or child can benefit from a state waiver of educational expenses for full-time or part-time attendance at a state career center, a Florida College System institution or a state university. The waiver is for up to 120 credit hours equal to the cost of tuition, matriculation, and registration fees while obtaining a career certificate, an undergraduate degree or a post-graduate degree. The education waiver is available for the surviving child until his or her 25th birthday or to the surviving spouse for up to five years and is available until the tenth anniversary after the individual's death.

The in-line-of-duty survivor benefits created by this proposal are not payable for a death resulting from an unlawful action by the individual or an intentionally self-inflicted bodily injury.

C. FISCAL IMPACT:

The following was provided by the Department of Management Services (DMS)¹²: The proposal is silent on the benefit amount provided under this program. Additionally, while the proposal specifies that benefits for active duty military members will be funded from General Revenue, it is silent on the source of funding for benefits for government employees.

To administer this benefit, Florida governmental employers could be responsible for administering the benefit which is payable to the named surviving beneficiary for the impacted employees working for that government employer. The payment to beneficiaries of the active Armed Services members may pose administrative challenges. Challenges may also arise from personnel being reassigned between bases in and out of Florida, maintaining current beneficiary information for individuals outside of the workforce of Florida governmental employers and coordinating any ongoing benefits for the survivors of active Armed Services members. There are 55,862 active military members and 36,387 reservists stationed in Florida.¹³

¹² DMS Analysis on CRC Proposal 49 (on file with CRC staff).

¹³ According to the September 2017 report by the Defense Management Data Center for the Department of Defense.

Administering this Florida survivor benefit for military members cannot be assigned to the federal employer. There would have to be a Florida-based administrator for the program such as a Florida government agency or a contracted third party administrator.

The first responder positions covered may require more detail to ensure the benefit program is structured as envisioned by the proposal. For example:

- Are correctional officers and correctional probation officers limited to those employed by the Department of Corrections or are these terms inclusive of the correctional officers working in county jails and detention centers and the probation officers employed by local governments?
- Are correctional officers, correctional probation officers and law enforcement officers based on a definition in current law or on some other basis?
- Will volunteer firefighters become covered in addition to firefighters employed by state and local governments?

Currently, certain governmental positions, including firefighters, law enforcement officers and correctional officers who die of specified conditions enumerated in section 112.18, Florida Statutes, (tuberculosis, heart disease and hypertension) are presumed to have died in the line of duty for workers' compensation and retirement benefits. It is unclear whether this presumption will apply under this benefit program as well. If this presumption does apply, current federal requirements under the HEART Act which specify that an employee be considered "returned to work" for survivor benefit eligibility do not create an in line of duty presumption for members of the armed services.

The structure of the benefit program and how benefits are paid could trigger financial reporting requirements under the Governmental Accounting Standards Board requiring the employers participating in the program (whether an individual employer or in some multiple employer or agent retirement plan) to record long-term financial liabilities on their financial statements for the benefits paid under this provision.

The educational benefits for the surviving spouse or children for other employees killed in the line of duty are currently coordinated through the employer to verify eligibility of the requirement when the survivors are seeking access to education within the Florida career centers, the State Community College System or the State University System. A similar approach could continue for the survivors of first responders employed by that agency but the survivors of active duty Armed Services personnel stationed in Florida will require a different approach since there is no Florida governmental employer to verify eligibility for access or define the time limitations for the educational component of this benefit.

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.

By Commissioner Gaetz

gaetzd-00019-17

201717__

A proposal to amend

Section 4 of Article X of the State Constitution to
create exceptions to the homestead exemption from
creditor claims.

Be It Proposed by the Constitution Revision Commission of
Florida:

Section 4 of Article X of the State Constitution is amended
to read:

ARTICLE X
MISCELLANEOUS

SECTION 4. Homestead; exemptions.-

(a) There shall be exempt from forced sale under process of
any court, and no judgment, decree or execution shall be a lien
thereon, except for the payment of taxes and assessments
thereon, obligations contracted for the purchase, improvement or
repair thereof, or obligations contracted for house, field or
other labor performed on the realty, the following property
owned by a natural person:

(1) a homestead, if located outside a municipality, to the
extent of one hundred sixty acres of contiguous land and
improvements thereon, which shall not be reduced without the
owner's consent by reason of subsequent inclusion in a
municipality; or if located within a municipality, to the extent
of one-half acre of contiguous land, upon which the exemption
shall be limited to the residence of the owner or the owner's
family;

(2) personal property to the value of one thousand dollars.

(b) These exemptions shall inure to the surviving spouse or
heirs of the owner.

(c) The homestead shall not be subject to devise if the

Page 1 of 2

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owner is survived by spouse or minor child, except the homestead
may be devised to the owner's spouse if there be no minor child.
The owner of homestead real estate, joined by the spouse if
married, may alienate the homestead by mortgage, sale or gift
and, if married, may by deed transfer the title to an estate by
the entirety with the spouse. If the owner or spouse is
incompetent, the method of alienation or encumbrance shall be as
provided by law.

(d) Notwithstanding subsection (a), a homestead is not
exempt from creditor claims if an owner:

(1) Obtained the homestead using the proceeds from a
fraudulent or dishonest act; or

(2) Caused the creditor's damages or losses by an
intentional criminal or fraudulent act.

The legislature may enact implementing legislation consistent
with the purposes of subsection (d), and such legislation may
include, but is not limited to, limitations periods and
protections for an innocent spouse or dependents.

Page 2 of 2

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620722

CRC ACTION

Commissioner .
Comm: FAV .
12/01/2017 .
.
.
.

The Committee on General Provisions (Plymale) recommended the following:

CRC Amendment (with title amendment)

Delete everything after the proposal clause
and insert:

Section 4 of Article X of the State Constitution is amended
to read:

ARTICLE X

MISCELLANEOUS

SECTION 4. Homestead; exemptions.—

(a) There shall be exempt from forced sale under process of



620722

any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person:

(1) a homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner's consent by reason of subsequent inclusion in a municipality; or if located within a municipality, to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or the owner's family;

(2) personal property to the value of one thousand dollars.

(b) These exemptions shall inure to the surviving spouse or heirs of the owner.

(c) The homestead shall not be subject to devise if the owner is survived by spouse or minor child, except the homestead may be devised to the owner's spouse if there be no minor child. The owner of homestead real estate, joined by the spouse if married, may alienate the homestead by mortgage, sale or gift and, if married, may by deed transfer the title to an estate by the entirety with the spouse. If the owner or spouse is incompetent, the method of alienation or encumbrance shall be as provided by law.

(d) Notwithstanding subsection (a), a homestead is not exempt from the claim of a creditor if the creditor:

(1) Establishes in an action against the owner of the



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homestead that the creditor's funds were fraudulently used by
the owner to acquire or improve the homestead; or

(2) Obtains a judgment against the owner of the homestead
for damages caused by an intentional tort or intentional
criminal or fraudulent act by the owner of the homestead, so
long as the homestead was not the primary residence for the
owner's spouse or minor child when the tort or act occurred or
at the time of the judgment in the action.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the proposal clause
and insert:

A proposal to amend
Section 4 of Article X of the State Constitution to
create exceptions to the homestead exemption from
creditor claims.

**Constitution Revision Commission
General Provisions Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 17

Relating to: MISCELLANEOUS, Homestead; exemptions

Introducer(s): Commissioner Gaetz

Article/Section affected:

Date: November 25, 2017

	REFERENCE	ACTION
1.	GP	Pre-meeting
2.	FT	

I. SUMMARY:

The proposal excludes from the constitutional homestead exemption: 1) homesteads that were obtained using the proceeds from a fraudulent or dishonest act, and 2) homesteads that caused the creditor's damages or losses by an intentional criminal or fraudulent act (fraudulent conveyance).

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Homestead Exemption

Section 4 of Article X of the Florida Constitution provides an exemption from forced sale of a natural person's homestead. The homestead includes:

- If located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements; or
- If located within a municipality, to the extent of one half-acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or the owner's family; and
- Personal property up to the value of one thousand dollars.

There are several exceptions to the homestead exemption, including:

- Payment of taxes and assessments;
- Obligations contracted for the purchase, improvement or repair; and

- Obligations contracted for house, field or other labor performed on the realty.

Historically, courts have liberally construed the homestead exemption in favor of the owner including protecting the homestead from civil and criminal forfeiture,¹ and when the homestead was acquired with funds from illicit proceeds.² Courts have also provided that homesteads are shielded from creditors when non-exempt funds were used to purchase the homestead with the specific intent of hindering, delaying, or defrauding creditors.³ However, Florida courts have held that a homestead purchased with the proceeds of fraud may be subject to an equitable lien in limited circumstances.⁴

Florida has several prominent examples of public figures embroiled in scandal shielding themselves from creditors by using the homestead exemption.⁵ These include white collar crimes,⁶ and sexual harassment lawsuits.⁷ In a recent case in Walton County, a woman was shot in the face by a former intimate partner and nearly died.⁸ The defendant in the case was unemployed, and his only asset was a home he had inherited from a deceased relative. The defendant was judgment proof, leaving the victim with mounting medical bills and no recourse.⁹

B. EFFECT OF PROPOSED CHANGES:

This proposal removes the homestead exemption from creditor claims if an owner:

1. Purchased the homestead using the proceeds from a fraudulent or dishonest act; or
2. Caused the creditors damages or losses by an intentional criminal or fraudulent act.

¹ See *Butterworth v. Caggiano*, 605 So.2d 56 (Fla. 1992).

² *Tramel v. Stewart*, 697 So.2d 821 (Fla. 1997). The court noted that, “However, to permit the State to forfeit a homestead based upon criminal activity in Florida requires a constitutional revision. We call this to the attention of the Constitutional Revision Commission.” The court also noted in footnote 10, that “In the event of a constitutional revision including an exception to the homestead guarantee for forfeiture pursuant to the Forfeiture Act, the legislature would need to address with particularity forfeiture of homesteads. For example, is there a threshold percentage of the amount used to purchase a homestead which would allow forfeiture? Does it have to be one hundred percent, more or less than fifty percent, or could one percent be the basis for forfeiture? Is there any limitation on the time between the obtaining of the proceeds in violation of the Forfeiture Act and the acquisition of the property?”

³ See *Havoco of America, Ltd. v. Hill*, 790 So.2d 1018 (Fla. 2001). Answering a certified question from the U.S Court of Appeals for the 11th Circuit.

⁴ Phillip M. Hanaka, *Recent Developments in Florida Homestead Law* at 2 (2006). See *Palm Beach Savings & Loan Ass’n v. Fishbein*, 619 So.2d 267 (Fla. 1993).

⁵ *Enron’s Many Strands: The Executives; Home as Shield from Creditors is Under Fire*, New York Times, April 4, 2002. <http://www.nytimes.com/2002/04/04/business/enron-s-many-strands-the-executives-home-as-shield-from-creditors-is-under-fire.html> (last visited 11/22/17).

⁶ *Ruth Madoff Files Homestead Exemption in Palm Beach on Same Day Authorities Announce Investigation*, New York Daily News, March 17, 2009. <http://www.nydailynews.com/news/money/ruth-madoff-files-homestead-exemption-palm-beach-day-authorities-announce-investigation-article-1.368394> (last visited 11/22/17).

⁷ *Roger Ailes Poured the Bulk of his Fox Severance Package into Palm Beach Mansion. Say \$36 Million Cash*, Miami Herald, May 18, 2017. <http://www.miamiherald.com/entertainment/ent-columns-blogs/jose-lambiet/article151338922.html> (last visited 11/22/17).

⁸ *Gaetz: Welcome home, O.J. Fla. is Your Kind of Place*, Pensacola News Journal, July 29, 2017. <http://www.pnj.com/story/news/2017/07/29/welcome-home-oj-florida-kind-place/104028184/> (last visited 11/22/17).

⁹ *Id.*

The proposal also provides that the legislature may implement legislation consistent with the purposes of this amendment, and such legislation may include, but is not limited to, limitations periods and protections for an innocent spouse or dependents.one.

C. FISCAL IMPACT:

None.

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.

By Commissioner Newsome

newsomer-00048-17

201729__

A proposal to create
a new section in Article X of the State Constitution
to establish requirements on employers to verify the
employment eligibility of new employees using the
Employment Authorization Program or any successor
program administered by the Federal Government and to
provide for enforcement by the Department of Business
and Professional Regulation.

Be It Proposed by the Constitution Revision Commission of
Florida:

A new section is added to Article X of the State
Constitution to read:

ARTICLE X
MISCELLANEOUS

(a) PUBLIC POLICY.

(1) An employer who knowingly or intentionally employs an
unauthorized alien violates the employer's licenses.

(2) Effective July 1, 2020, every employer shall, after
making an offer of employment which has been accepted by an
employee, verify the employment eligibility of each new employee
using the employment authorization program. Such verification
must occur within the period stipulated by federal law or
regulations after the hiring of the employee.

(3) The provisions of this section are enforceable without
regard to race, religion, gender, ethnicity, or national origin.

(b) DEFINITIONS. As used in this section, the term:

(1) "Department" means the Department of Business and
Professional Regulation or its successor agency.

(2) "Employee" means any person who performs employment
services in this state for an employer pursuant to an employment

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relationship between the person and employer.

(3) "Employer" means any individual or type of organization
transacting business in this state which holds or has applied
for a license issued by an agency in this state and employs
individuals who perform employment services in this state. The
term does not include an entity that hires a bona fide
independent contractor or the occupant or owner of a residence
who hires casual domestic labor to perform work customarily
performed by a homeowner entirely within a residence.

(4) "Employment authorization program" means the E-verify
program (formerly the "Basic Pilot Program") under Pub. L. No.
104-208, Div. C, title IV, Subtitle A, 110 Stat. 3009-655 (Sept.
30, 1996), as amended, or any successor program designated by
the federal government for verification that an employee is not
an unauthorized alien.

(5) "Employment of unauthorized alien" means an employment-
related act designated as unlawful under section 274A of the
Immigration and Nationality Act, 8 U.S.C. s. 1324a, as amended.

(6) "License" means an agency permit, certificate,
approval, registration, charter, or similar form of
authorization that is required by law and that is issued by any
agency or political subdivision of this state for the purpose of
operating a business in this state, excluding professional
licenses, but including employment licenses, articles of
organization, articles of incorporation, a certificate of
partnership, a partnership registration, a certificate to
transact business, or similar forms of authorization issued by
the state.

(7) "Unauthorized alien" means an unauthorized alien as

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defined by 8 U.S.C. s. 1324a(h)(3).

(c) COMPLIANCE.

(1) The department shall adopt rules necessary for the implementation and enforcement of this section by July 8, 2019. If the department does not adopt rules within the timeframe set forth in this paragraph, a resident of this state has standing to seek judicial relief to compel compliance with this paragraph.

(2) The department shall develop and administer a statewide random auditing program to inspect employers for compliance with this section. The department and its inspectors, agents, or designees, upon proper presentation of credentials to the owner, manager, or agent of the employer, may enter at reasonable times and have the right to question, either publicly or privately, any employer, owner, manager, or agent and the employees of the employer and inspect, investigate, reproduce, or photograph original business records relevant to determining compliance with this section.

(3) Any person who has actual or constructive knowledge that an employer has employed an unauthorized alien within the preceding 90 days may file a complaint with the department. A person who knowingly files a false and frivolous complaint under this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes (2017).

(4) An employer who fails to verify eligibility of new employee within three business days is subject to the following penalties:

a. For a first violation by an employer, the department

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shall place the employer on probation for a period of one year, during which time the employer must submit quarterly reports to the department demonstrating compliance.

b. A subsequent violation within three years of the first violation results in the suspension of the employer's licenses for at least ten days, but not more than thirty days.

(5) An employer who knowingly or intentionally employs an unauthorized alien is subject to the following penalties:

a. If the department has determined that a licensee knowingly or intentionally employs an unauthorized alien, the department must, upon seventy-two hours written notice, suspend all licenses held by the employer. The employer's licenses must be reinstated when the employer demonstrates to the satisfaction of the department that the unauthorized alien has been terminated, and the employer has paid a reinstatement fee equal to the cost of investigating and enforcing the matter, not to exceed \$1,000 for each investigation.

b. If the investigation determined that at least five unauthorized aliens were employed by the licensee on the same date, the department must suspend the licenses for at least an additional seven days, but not more than thirty days, following compliance by the employer with the requirements of subparagraph a. For a subsequent violation under this subparagraph, within three years of the first suspension, the employer's licenses are suspended for at least an additional thirty days, but not more than sixty days, following compliance with subparagraph a. For a third violation within six years of the first suspension, and for each subsequent violation of this subparagraph, the employer's licenses are suspended for an additional 180 days.

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120 c. During the period of suspension, an employer is
121 prohibited from engaging in activities for which the suspended
122 license or licenses was required by law.
123 (6) The department shall take the following measures in
124 order to assist employers in complying with the requirements of
125 this section:
126 a. The department shall establish a website to provide
127 assistance to employers in complying with this section. On the
128 website, the department shall post and maintain a public
129 database disclosing employers who have violated the requirements
130 of this section.
131 b. All license applications must include a notice of the
132 requirements of this section.
133 c. The department shall submit a report of each
134 investigation for which a penalty has been imposed pursuant to
135 paragraphs (4) or (5) to United States Immigration and Customs
136 Enforcement or its successor agency.
137 (d) SEVERABILITY. The provisions of this section are
138 severable and if any clause, sentence, paragraph, or section of
139 this measure, or an application thereof, is adjudged invalid by
140 any court of competent jurisdiction, other provisions shall
141 continue to be in effect to the fullest extent possible.
142 (e) LEGISLATION. This section does not limit the
143 legislature from enacting laws consistent with this section.
144 (f) PRESUMPTION OF COMPLIANCE. An employer who in good
145 faith verifies the immigration status of a new employee pursuant
146 to the employment authorization program is presumed to have
147 complied with the requirements of this section. An employer who
148 terminates an employee in order to comply with the requirements

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149 of this section is not subject to a civil action for wrongful
150 termination of the employee.

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CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

Nov 28

Meeting Date

Prop 4E

Proposal Number (if applicable)

*Topic E-verly

Amendment Barcode (if applicable)

*Name Adam Black - Hopping Green & Sams

Address _____
Street

Phone _____

City

State

Zip

Email adamb@hgslew.com

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Florida Farm Bureau ; FL Fruit & Vegetable Assoc.

Are you a registered lobbyist? ☒ Yes ☐ No

Are you an elected official or judge? ☐ Yes ☐ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

11.28.17

Meeting Date

29

Proposal Number (if applicable)

*Topic Proposal 239

Amendment Barcode (if applicable)

*Name ~~CHRISTOPHER~~ CHRISTOPHER EMMANUEL

Address 136 S. BRONOVICH

Phone 850 245/200

Street

City

TLH

FL

State

32301

Zip

Email CEMMANUEL@FLCHAMBER

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? FLORIDA CHAMBER OF COMMERCE

Are you a registered lobbyist? ☒ Yes ☐ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

X

11/28/17
Meeting Date

Proposal Number (if applicable)

*Topic Frank h. Morris Ph.D

Amendment Barcode (if applicable)

*Name AD E verify + the Middle Class Worker

Address 138 Sandy Creek Dr.
Street
DeSoto TX
City State Zip

Phone 972-333-8045

Email f1mwband211@outlook.com

*Speaking: ☒ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? FAIR (Federation American Immigration Reform)

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

11-28-17

Meeting Date

X

29

Proposal Number (if applicable)

*Topic E-Verify

Amendment Barcode (if applicable)

*Name Spencer Raley

Address 25 Mass Ave NW

Phone 202-328-7004

Street

Washington

DC

20001

City

State

Zip

Email sralay@fairus.org

*Speaking: ☒ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who?

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

11-28-2017
Meeting Date

X

29
Proposal Number (if applicable)

*Topic EVERIFY

Amendment Barcode (if applicable)

*Name DAVID CAULKETT

Address 2314 S Cypress Blvd Apt H35
Street
Pompano Beach, FL 33069
City State Zip

Phone 954 970 1492

Email David@FLIMEN.ORG

*Speaking: ☒ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? FLORIDIAN FOR IMMIGRATION ENFORCEMENT

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

11/28/17

Meeting Date

29
Proposal Number (if applicable)

*Topic E-verify

Amendment Barcode (if applicable)

*Name Robert Windham

Address 7 Bougainvillea Ct.

Phone 850-654-7103

Street

Miramar Beach, FL

City

State

Zip

Email wavdeagle46rw@cox.net

*Speaking: ☒ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

Meeting Date

X

Proposal Number (if applicable)

*Topic

Amendment Barcode (if applicable)

*Name

JACK OLIVER

Address

1802 LIGHTHOUSE RD.

Street

Phone

222-215-8424

Email

JACK.OLIVER1900@BRIAR

City

State

Zip

*Speaking:



For



Against



Information Only

Waive Speaking:



In Support



Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?



Yes



No

If yes, who?

Are you a registered lobbyist?



Yes



No

Are you an elected official or judge?



Yes



No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

**Constitution Revision Commission
General Provisions Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 29

Relating to: MISCELLEANOUS

Introducer(s): Commissioner Newsome

Article/Section affected:

Date: November 22, 2017

	REFERENCE	ACTION
1.	GP	Pre-meeting
2.	EX	

I. SUMMARY:

This proposal creates a new section in Article X of the State Constitution that establishes requirements for all employers who hold, or have applied for, any type of license to operate a business in the State of Florida to verify the employment eligibility of new employees using the E-Verify system, beginning on July 1, 2020. The proposal provides automatic penalties for failing to verify the employment eligibility of new employees and for knowingly or intentionally employing an unauthorized alien. The proposal requires the Department of Business and Professional Regulation (DBPR) to enforce these provisions by adopting rules by July 8, 2019, developing and administering a statewide random auditing program to inspect employers for compliance, and receiving and investigating complaints from persons who have knowledge of an employer hiring unauthorized aliens. To assist employers with compliance, DBPR is required to establish a website that includes a public database disclosing employers who have violated these requirements and submit reports of all investigations that resulted in a penalty to the United States Immigration and Customs Enforcement.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Federal law requires all employers to verify the identity and employment eligibility of all persons hired to work in the United States by completing the Federal “Form I-9”, also referred to as the “Employment Eligibility Verification” form,¹ but there is currently no

¹ The Federal I-9 form requirement is a component of the Immigration Reform and Control Act of 1986 (IRCA). For more information see <https://www.uscis.gov/i-9-central/about-form-i-9/statutes-and-regulations> (last visited 11/22/17).

federal requirement that all employers use the E-Verify system to do so.² In Florida, although Governor's Executive Order 11-116³ does require all agencies under the direction of the Governor to verify the employment eligibility of all new employees by using the E-Verify system, there is currently no statutory requirement that all employers use the E-Verify system to determine employment eligibility.⁴

A 2012 report by the National Conference of State Legislatures (NCSL), identified twenty states that require some use of the E-Verify system for a least some public and/or private employers.⁵ Three of these states, Michigan, Pennsylvania, and West Virginia mandate E-Verify for some employers.⁶

B. EFFECT OF PROPOSED CHANGES:

This proposal creates a new section in Article X of the State Constitution that establishes requirements for all employers who hold (or have applied for) any type of license to operate a business in the State of Florida to verify the employment eligibility of new employees using the employment authorization program (defined as the E-Verify system), beginning on July 1, 2020. Employers are defined as any individual or type of organization transacting business in this state and holds or has applied for a license issued by an agency. "License" is defined as an agency permit, certificate, approval, registration, charter, or similar form of authorization that is required by law and that is issued by any agency or political subdivision of this state for the purpose of operating a business in this state. The definition excludes professional licenses, but includes employment licenses, articles of organization, articles of incorporation, a certificate of partnership or partnership registration, certificate to transact business, or similar forms of authorization.

The proposal provides specific automatic penalties for violations of its requirements. Employers that fail to verify the employment eligibility of new employees using the E-Verify system are subject to one year of probation for a first violation, and are required to submit quarterly reports demonstrating compliance during the probationary period. Subsequent violations within three years of the first violation results in the employers license(s) being suspended for a period ranging between ten to thirty days.

For an initial violation of knowingly or intentionally employing unauthorized aliens, the proposal requires DBPR to suspend all licenses held by the employer, including licenses issued by other agencies, until the employer demonstrates compliance and pays a

² For more information on the E-Verify system see The E-Verify FAQ by NCSL (2012) <http://www.ncsl.org/documents/immig/E-VerifyFAQ2.pdf> (last visited 11/22/17).

³ See EO 11-116 http://www.flgov.com/wp-content/uploads/orders/2011/11-116-suspend_10-7.pdf (last visited 11/22/17). See also EO 11-02 http://www.flgov.com/wp-content/uploads/orders/2011/11-02-employment_9-26.pdf (last visited 11/22/17).

⁴ In 2011, the Florida Legislature considered several bills that required employment eligibility verification via the Federal E-Verify system. See CS/SB 2040 (2011): Enforcement of Immigration Laws. The bill passed the Senate, but died in messages in the Florida House of Representatives. <http://www.flsenate.gov/Session/Bill/2011/2040> (last visited 11/22/17).

⁵ See E-Verify Report by NCSL (2012) <http://www.ncsl.org/research/immigration/everify-faq.aspx> (last visited 11/22/17).

⁶ *Id.* For a more detailed report on state action regarding E-Verify see http://www.ncsl.org/documents/immig/StateActions_Everify.pdf (last visited 11/22/17).

reinstatement fee that is equal to the cost of investigating and enforcing the matter (not to exceed \$1000 for each investigation). For violations involving the employer hiring five or more unauthorized aliens, DBPR must suspend the employer's licenses for a period ranging between seven to thirty days. Subsequent violations within three years of the first suspension result in suspension of the employer's licenses for a period ranging from thirty to sixty days after compliance is demonstrated. For a third violation within six years of the first suspension and each subsequent violation, the employer's licenses are suspended for an additional 180 days after compliance.

The proposal allows persons who have knowledge of an employer hiring unauthorized aliens to file a complaint with DBPR. Employers who fail to verify the eligibility of a new employee within three business days are subject to penalties ranging from one year of probation to suspension of their license.

The proposal designates DBPR as the primary enforcing authority for this section. DBPR is required to put employers on probation and suspend all licenses of the employer, including those of other agencies, and collect reinstatement fees paid by the employers. Rules necessary for the implementation and enforcement of these requirements must be adopted by July 8, 2019. In addition to receiving and investigating complaints from individuals who have knowledge of employers hiring unauthorized aliens, DBPR is required to develop and administer a statewide random auditing program to inspect employers for compliance with this section.

To assist employers with compliance, the proposal requires DBPR to establish a website that includes a public database containing the names of employers who have violated this section and submit reports of all investigations that resulted in a penalty to the United States Immigration and Customs Enforcement. Additionally, the proposal requires that applications for all licenses, including those issued from other agencies, include notification of the requirements of this section.

It is important to note that the proposal requires DBPR to provide disciplinary enforcement for violations, regardless if DBPR is the agency with statutory jurisdiction over the employer.

C. FISCAL IMPACT:

According to DBPR, this proposal will increase workload and consequently have a fiscal impact on state government.⁷ Due to the scope of potential variables relating to all the different types of licenses statewide, the actual increase in new workload is unknown. Although indeterminate, the increase in workload, especially initially, is anticipated to be substantial.

⁷ Information provided by DBPR agency analysis of impact from Proposal 29 (on file with CRC staff).

III. Additional Information:

A. Statement of Changes:

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.